

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6655 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

MOZAMBIQUE INDIAN REPATRIATES ASSOCIATION & ORS.
VERSUS
THE STATE OF GUJARAT

Appearance:

MR GR SHAIKH for Petitioners
MR SR DIVETIA, AGP, for Respondent

Coram: S.K. Keshote, J
Date of decision: 3/10/1997

C.A.V. JUDGMENT

#. The petitioner No.1 is the Association of Mozambique Indian Repatriates and the petitioners No.2 and 3 are its President and Secretary respectively. This Special Civil Application has been filed by the petitioners challenging therein the order dated 30th August 1985 passed by the District Collector, Junagadh, under which, its own order dated 25th February 1971 relating to 92 persons and order dated 6th May 1975 relating to 8 persons, allotting land to those persons has been recalled and the said lands have been ordered to be resumed and the Mamlatdar, Porbandar, was directed to start proceedings for taking possession of said lands.

#. The facts of the case which are relevant for decision of this Special Civil Application are to be taken briefly.

Because of political situation relating to Diu, Daman and Goa, the members of the petitioner No.1 Association were forced to leave Mozambique and they came to India for permanent settlement, and had in fact now are already settled in India. Whatever immovable and moveable property which the members of petitioner No.1 were having there were confiscated by the Portugal Government. Their claim relating to compensation have been undertaken by the Government of India but so far, as per averments made in this Special Civil Application, those have not been settled.

#. The members of the petitioner No.1-Association submitted an application to the Collector, Junagadh for grant of land at Village Chhaya in Porbandar Taluka. Under the order dated 25th February 1971, the Collector, Junagadh, ordered to grant plots of Survey No.280 and 281 of Village Chhaya, Taluka Porbandar, to 92 members of the petitioner No.1-Association. Under the order dated 6th May 1975, 8 members of the petitioner No.1 were granted the land in the very land bearing Survey Nos.280 and 281. It is not in dispute that these persons were also members of the petitioner No.1-Association. Each of the members of the petitioner No.1-Association have been granted a Sanad in Form No.HH as provided under Rule 43 read with Section 133 of the Bombay Land Revenue Code (hereinafter referred to as 'Code'). In para-7 of the Special Civil Application, it is submitted that except the change that is either with respect to the change in number or in respect of the addition of the members or in respect of subtraction of the members, no change has taken place so far as the main and original orders, annexures 'A' and 'B' are concerned. The petitioners submitted that in the year 1976, an enquiry was held on the ground that the

members of petitioner No.1 have not complied with the conditions of the order and in that enquiry, it transpires that the period of one year is said to have been extended, but it is case of the petitioners that they have not prayed extension of time. However, nothing further has turned out of that enquiry. In the year 1983, the Collector has again started an enquiry and after giving notices, the order dated 25th February 1971 in favour of 92 members of petitioner No.1-Association and the order dated 6th May 1975 in favour of 8 members of petitioner No.1-Association were cancelled and the land allotted to the members aforesaid was ordered to be resumed. Hence this Special Civil Application before this Court.

#. However, the respondent has not filed any reply to the Special Civil Application.

#. The learned counsel for the petitioners, Shri G.R.Shaikh, contended that the respondent-Collector has not given notice or opportunity of hearing to many of the members of the petitioner No.1-Association before passing the impugned order, i.e. resumption of land to the Government. It has next been contended that the Collector has no power to resume the land once Sanad has been granted. After grant of Sanad, power does not lie even with the Government to order for resumption of the land and in such case the only remedy could have been of filing a civil suit. In support of this contention, the learned counsel for the petitioners placed reliance on the decision of this Court in the case of Patel Raghav Natha v. G.F. Mankodi, Commissioner, Rajkot Division & Ors., reported in 6 GLR 34. Lastly it is contended that the Government, before passing of the order cancelling therein its previous resolutions dated 6th February 1970 and 31st March 1975, has not afforded any opportunity of hearing to the affected persons. In support of this contention, the learned counsel for the petitioners placed reliance on the decision of this Court in Special Civil Application No.2054 of 1996 decided on 18.6.96.

#. Shri S.R.Divetia, learned counsel for the respondents, replying to the contentions raised by learned counsel for the petitioners, contended that the grievance made by the petitioners of not giving notices to all the affected persons before passing of the impugned order is not justified. It is a case where the petitioner No.1-Association has prosecuted the claim of its members for allotment of land and many of its members were also present when the impugned order has been passed. Those persons who have been alleged to have not

been given the notices before passing of the impugned order have not come up before this Court. Before this Court, the Association is present and when the Association is there to espouse the case of its members, how far it is justified on its part to challenge the impugned order on the ground of no notice or opportunity of hearing to its members. Replying to the second contention, Shri Divetia, learned counsel for the respondents submitted that the grant of plots to the members of the petitioner No.1-Association was with specific condition that construction has to be raised on it within a period of two years from taking possession and where any of the terms of grant is violated, the lands were to be resumed to the Government. None of the members of petitioner has constructed house on the said land till the order impugned has been passed, what to say within a period of two years. The Collector has therefore taken a decision vide its Resolution, reference of which has been made in the impugned order, to resume the lands which have been granted for construction of houses to the members of petitioner No.1., in case construction thereon has not been raised within a period of six years. The decision, reliance on which has been placed by the learned counsel for the petitioners, Shri Divetia contended, is of little help to the petitioners. There the case was altogether different. The grant made to the members of the petitioner No.1 was subject to the conditions and on violation of any of those conditions, the land has to be resumed to which no exception could have been taken. So far as the last contention of the learned counsel for the petitioners is concerned, Shri Divetia, learned counsel for the respondents, submitted that the grant of land has been made by the Collector after taking sanction of the Government and as such he thought it to be fit to take also approval of his action of resumption of the land of members of the petitioner No.1-Association. It is not the case where the Government has passed the order. The order of the grant of land has been made by the Collector and the order of resumption has also been made by the Collector, but this officer has considered it to be appropriate to take Government approval as the grant has been made with Government approval. The Government, while approving the order for resumption of lands passed by it, was not under obligation to hear petitioner No.1-Association or its members.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

#. From the documents which have been produced on record

of this Special Civil Application, I find that the land has been allotted subject to the conditions, some of which read as under:

- (1) The said land is granted for residential house and applicant should use it personally.
- (2) The applicant shall build on the plot in accordance with the ribbon Development Rules.
- (3) The said land shall not be sold, mortgaged, gifted, transferred, exchanged or any transaction as such or that the said land shall not be encumbered in any way without the previous sanction of the Government.
- (5) Prior to the construction the permission for the construction from the Gram Panchayat shall be obtained.
- (8) That the construction shall have to be made within two years from the date of the receipt of the possession and the land should be used for residential purpose.
- (10) In case of the breach of any of the conditions the collector shall resume the land and shall not impose penalty under the provisions of the Bombay Land Revenue Code and the Rules made thereunder.

#. Re.:Contention of not giving notices of opportunity of hearing to some of the members of petitioner-Association.

The petitioner No.1 is an Association and it espouses causes of its members for allotment of the land and now it is still espousing the cause of these members by filing Special Civil Application against the impugned order. Those members who are alleged to have not been given notices have not filed Special Civil Application before this Court. So, when the Association is taking care of its members, how far it is justified for the petitioner No.1-Association to raise this point challenging the validity of the order impugned in this Special Civil Application. It is not the case of the petitioners that no notice has been given by the Collector to its members, but what it is contended that many of its members were not given the notices. When the Association is representing the cases of its members, then even if it is assumed or accepted, for the time

being, that notices to all the members who were allottees of the land were not given, then too, the impugned order does not vitiate on this ground. Under the impugned order, the petitioners have not shown in the Special Civil Application as well as their learned counsel during the course of arguments, how any prejudice is likely to be caused to those members who have alleged to have not been given notices by the Collector before passing the impugned order. It is a case where there is an association of persons and under one order, the land has been allotted to 92 persons and under another order, to the 8 persons. Some of the members admittedly have been given notices and have been heard by the Collector, Junagadh, before passing the impugned order. If it is so, then otherwise also, it is a case where substantially principles of natural justice have been followed and in the matter of association of persons who have been allotted land under one and common order, even if notices to all members have not been given, it cannot be said to be a case of causing prejudice to those persons as well as on this ground, the order impugned does not vitiate. The first contention raised by learned counsel for the petitioner is without any merits.

##. Re.: The Collector has no power to cancel Sanad. One of the Sanads have been filed on record of Special Civil Application as annexure 'C'. To appreciate the aforesaid contention, I consider it necessary to refer some of the relevant provisions of the Gujarat Land Revenue Rules, 1972 (hereinafter referred to as 'Rules 1972'). Rule 42 of the Rules 1972 provides that "unoccupied land required or suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots by auction to the highest bidder whenever the Collector is of opinion that there is a demand for land for any such purpose; but the Collector may, in his discretion, dispose of such land by private arrangement, either upon payment of a price fixed by him, or without charge, as he deems fit." Rule 43 of the Rules 1972 makes a provision for conditions of grants for building. This rule provides that save in special cases in which the Collector with the sanction of the State Government otherwise directs, or in localities falling under rule 44, land for building sites shall be granted in accordance with the provisions contained therein. Sub rule 2 of rule 43 of the Rules 1972 provides that in the case of such grants, an agreement in form F, or form H, as the Collector may deem fit, shall ordinarily be taken from the person intending to become an occupant, and in the case of land in development scheme undertaken by the State Government in

any district or in special cases, an agreement in form HH shall be taken. A conjoint reading of these two provisions clearly gives out that after the grant of land to the petitioners, an agreement in any form provided under aforesaid rules and as directed by the Collector has to be taken from the petitioners, which is produced on record as document annexure 'C' but termed by the petitioners as 'Sanad'. After going through this document, I find that it is an agreement executed by petitioners in form HH as prescribed under rule 43 of the Rules 1972. This document is very material and title of the same, as per translated document, reads thus:

Form of Agreement to be passed by persons
intending to occupants of land included in a
development scheme or in other special cases
(vide rule 43).

So it is not a 'Sanad' as contended by learned counsel for the petitioners which has been executed by the Collector in the name of his Excellency the Governor of the State. This is an agreement which is to be executed by a person to whom land has been granted and in the agreement, the petitioners have covenanted that construction on the lands shall be made by them within two years from the date of receipt of possession of the land and the land should be used for residential purposes only. They have further covenanted that in case of breach of any of the conditions the Collector shall resume the land and shall not impose penalty. It is not in dispute that possession of the land has been delivered and the petitioners have not raised the construction thereon for all these years. The Collector, under its order dated 30th August 1985 has observed that in the first case, the construction has not been raised for more than twelve years and in the second case, for more than eight years. The petitioners were allotted the lands subject to specific conditions to be fulfilled by them and in case of violation of those conditions, the Collector has not committed any error whatsoever to call upon to show cause and after satisfying that they have no reasonable cause not to raise construction on the lands allotted within stipulated period and in these facts, the Collector has correctly passed the order of resumption of land to the Government. Where the lands were granted to the petitioners for construction of residential houses and where they failed to use the said lands for the purpose aforesaid, the same were rightly resumed so that the persons who are really in need of grant of lands for construction of buildings can be given the same. The persons who only wanted to retain the lands for the

reason of earning profits by selling the same or who are otherwise not in a position to raise construction, have no justification whatsoever to retain the site for all the years to come. The lands were allotted in the year 1971 and 1975 and by now more than 25 years in one case and 22 years in another case have lapsed but the constructions thereon are not raised. Though during the pendency of Special Civil Application they could not have raised the construction as this Court has ordered for maintaining status-quo, but prior to passing the impugned order by the Collector, they had sufficient period for raising construction and in case the members of petitioner No.1-Assn. were really desirous of raising construction, they could have done so. The very fact that the members of petitioner No.1-Assn. have not put the construction on the lands within statutory period or within reasonable proximity of time, coupled with the fact that many of the members of petitioner No.1-Assn. are settled elsewhere shows that it is a case where these persons got this land granted in their favour with a clear object to earn profit out of it. That is not the purpose or the object of the Code or the Rules framed thereunder. The provisions for grant of land for building purposes are framed for the needy and bonafide persons and who can stand to their agreement. These grants are not meant for the purpose which the petitioners had intended, i.e. to earn profits. The grantees of the lands are about 100 in number, but this petition has been filed by their association. None of the individual persons have come up before this Court against the impugned order. This is yet another important fact which shows that the grantees of these lands are not the persons who are aggrieved of the impugned orders. They have no interest whatsoever in the lands and they are not really in need of lands. The association is the only person which is taking care of that and possibility is there that they are holding the land for purposes other than constructing residential houses for the own use by grantees of these lands. In case it would have been really an order causing prejudice to the grantees of the lands, then they would have come up before this Court and the cause would not have been left to the association. The association is espousing cause of grantees and in the present case, on the finding of the Collector that many of the grantees are residing elsewhere, reasonable inference can be drawn therefrom that these lands are being retained by the association in the name of grantees for the purpose of making profit. There is also a possibility that the lands would have gone in different hands, but that much information has not been produced on record by respondents. The learned

counsel for the petitioners has placed strong reliance on the decision of this Court in support of his contention that the Collector has no power to cancel the Sanad, in the case of Patel Raghav Natha v. G.F. Mankodi, Commissioner, Rajkot Division & Ors., (supra) but that case is clearly distinguishable. There the matter was of grant of permission for non agricultural use to the petitioners therein under Section 65 of the Land Revenue Code. The Sanad has been granted to the petitioners therein in the form 'M' and that Sanad was executed by the Collector in the name of His Excellency the Governor. As stated earlier, that is not the case here. Here is the case of agreement which was executed by the petitioner No.1-Association's members. There is yet another aspect to be considered in the matter. If such contention is accepted then though the lands are meant for construction of houses thereon within stipulated period, the same will be kept unused for years to come and it will frustrate the very purpose and object of grant of lands to needy persons. People will get the lands granted in their favour and they will keep it unused for years which will result in deprivation of lands and buildings for years to the persons who are in real and bonafide need of lands. However, it is not necessary to go in depth on this question in this Special Civil Application as I am of the considered opinion that decision of the case aforesaid cited by learned counsel for the petitioners is not applicable to the facts of the present case. Before parting with the consideration of submissions, I consider it to be advantageous to refer to another aspect of the matter. It is a different matter that the learned counsel for the petitioners now may raise any grounds available, in this Special Civil Application but after going through the orders of the Collector, I do not find any such ground which has been raised before it by petitioners. Before the Collector, the case which was presented by petitioners on behalf of grantees was that because of their weak financial position, they could not built houses and when their financial position will improve, they will build their houses. Next defence was given that the lands are far away from the city and there are no facilities and when all other persons will build their houses, they will also build their houses. So these grounds which have been raised by learned counsel for the petitioners before this Court were not raised in the proceedings before the Collector. These are absolutely new grounds raised by learned counsel for the petitioners and normally in the matter of a writ of Certiorari or any other writ under Article 226 of the Constitution of India, new points should not be allowed to be raised. From the defence

which has been taken on behalf of the members of the petitioner No.1-association, it is clearly borne out that grantees were not really intending to raise any construction. They have taken these lands with the clear understanding to dispose off the same at a later point of time. In fact, the day on which the lands were allotted to them, they were not in need thereof. If the lands would have been really needed by the members of petitioner No.1-association, then after so many years, they would not have come with defence of weak financial position as well as that the lands are away from the city and that there are no facilities available. From these grounds, it can safely be inferred that grant has been made by the Collector to the persons who were not bonafide persons and who were not in bonafide need of lands for raising construction of houses thereon.

##. The last contention of learned counsel for petitioners is also devoid of any substance. From reading of the impugned order of Collector, it cannot be said that he has acted mechanically and passed this order on directions of the Government. He sent the matter for sanction of the Government for the reasons as recorded by him in his impugned order. Grant of land has been made by him in favour of grantees, members of petitioner No.1-association after obtaining permission from the government and while resuming the very lands he acted reasonably and fairly by taking previous sanction of the Government. After forming the opinion of resuming the land after hearing the petitioners, the Collector has not committed any error in case the papers were sent for sanction of the Government. In the case where the grant itself was made with permission of the Government, then this course was to be followed and the same was accordingly followed and as such it cannot be taken to be a case that the Collector has mechanically acted as signatory of the order which has been made by Government. The decision of this Court given in Special Civil Application No.2054 of 1996, in the case of Bhil Ambalal B. v. State of Gujarat & Anr., Coram: Mr.Justice A.N.Divecha, on which reliance has been placed by learned counsel for petitioners is clearly distinguishable and is of little help to them.

##. Taking into consideration the totality of the facts of this case, I do not find any substance in this Special Civil Application and the same deserves to be rejected. Order accordingly. The Special Civil Application is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. The costs of the petition is quantified at Rs.2,000/- to be paid by the

petitioners to the respondents.

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(sunil)